IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 218 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JERAMBHAI JESANGBHAI PARMAR

Versus

THE POLICE SUB INSPECTOR

Appearance:

1. Special Criminal Application No. 218 of 2003

MR RAJESH K SHAH for Petitioner No. 1

..... for Respondent No. 1,3-5

Mr V M Pancholi, APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/07/2003

ORAL JUDGEMENT

The petitioner herein has preferred this petition before this Court under Article 226 and 227 of the

Constitution of India read with sections 482 and 451 of the Code of Criminal Procedure, 1973 for interim custody of a motor vehicle registered in the name of the present petitioner which has been seized by the Police Investigating Officer being PSI, Dhanera Prohibition police station in connection with C.R. No.5066 of 2001 relating to an offence punishable under the Bombay Prohibition Act, 1949.

3. Rule was issued and Mr V M Pancholi, learned APP has appeared for the State. I have heard the learned Advocates for the parties and have perused the papers. The fact that the petitioner is the registered owner of the vehicle, has not been seriously disputed. He was not present when the offence is said to have been committed. Mr V M Pancholi, learned APP has submitted that the vehicle in question was used for carrying illicit liquor. At the same time, when the vehicle has been seized in an offence, it may not be productive to keep it in open place for a long time. Therefore, considering the decision of Ashok Kumar v. State of Bihar & Ors., reported in 2001 (9) SC 7818, it would be appropriate to entrust the vehicle for temporary purpose to the petitioner on appropriate conditions.

4. For the foregoing reasons, this petition is allowed. The muddamal vehicle No.GJ-4-D-3332 shall be handed over to the petitioner on his furnishing solvent surety and P.R. of Rupees Two lakhs Fifty thousand to the satisfaction of the trial court on following conditions:

1. The vehicle is being entrusted to the petitioner by way of temporary measure and it is subject to the ultimate decision in criminal case.

2. The petitioner shall not permit user of the said vehicle for any illegal purpose.

3. The petitioner agrees that he will always accompany the vehicle as and when the vehicle will be put to motion. Therefore, an undertaking shall be given by him that he will always be with the vehicle as and when the vehicle will be put to motion and, therefore, it will not be open to the petitioner to take a defence in future that the vehicle is used for any illegal purpose without his knowledge or notice.

4. The petitioner shall produce the vehicle as per the requirement of the court.

5. The petitioner shall not sell or transfer the vehicle, its ownership or custody till the disposal of the case in question.

6. The petitioner shall submit authentic copy of R.C. book with respect to the said vehicle standing in his name.

The petition is allowed accordingly. Rule is made absolute. D.S. permitted.

[D P Buch, J.]
msp